

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT PADUCAH

CRIMINAL ACTION NO. 5:06 CR-00019-R

UNITED STATES OF AMERICA

PLAINTIFF

v.

STEVEN D. GREEN

DEFENDANT

**UNITED STATES' MOTION FOR TRIAL DATE**

Comes the United States of America, by counsel, and moves the Court, pursuant to the speedy trial clause of the Sixth Amendment to the United States Constitution, as well as pursuant to Title 18, United States Code, Section 3161, the Speedy Trial Act of 1974, to enter the tendered order scheduling this case for trial on August 4, 2008.

**I. Procedural Background**

On June 30, 2006, Steven Green was arrested in North Carolina on a Criminal Complaint charging him with violations of Title 18, United States Code, Section 3261(a)(2), the Military Extraterritorial Jurisdiction Act. The charges stemmed from Green's alleged involvement in a rape and quadruple homicide in Yousifiyah, Iraq, on March 12, 2006, while Green was serving as a soldier in the United States Army.

On November 7, 2006, a grand jury in the Western District of Kentucky returned a seventeen-count indictment against Green alleging conspiracy to commit murder and sexual abuse, premeditated murder, felony murder, aggravated sexual abuse, aggravated sexual abuse with a child, use of a firearm during a crime of violence, and obstruction of justice. On July 3, 2007, the United States filed its notice of intent to seek the death penalty.

During a further proceeding held on November 30, 2006, the Court found the case to be complex, and concluded that it was unreasonable to expect adequate preparation for pretrial proceedings, or for the trial itself, within the time limits set by the Speedy Trial Act, 18 U.S.C. § 3161. During a telephonic further proceeding held on April 4, 2007, the Court asked the parties to try and reach an agreement upon schedule for trial of the case, as well as for various pretrial deadlines. During a further proceeding conducted by the Court on August 29, 2007, the United States suggested trial begin in the Spring of 2008, while defense counsel suggested Summer or perhaps late Fall of 2008. The Court expressed desire for a firm and agreed-upon trial date to be determined at the next further proceeding which was held on November 13, 2007.

By letter of October 30, 2007, the United States proposed to defense counsel a pretrial schedule and proposed a late summer trial date of August 4, 2008. Shortly before the further proceeding of November 13, 2007, defense counsel submitted to the United States, and to the Court, a letter stating the position of the defense that trial should not be scheduled prior to April 2009, which is 30 months after Green's indictment and 21 months after the United States' notice of intent to seek the death penalty was filed. In light of the respective positions of the parties, it is clear the parties will be unable to reach an agreement, as the Court requested, as to when this case should be set for trial. Accordingly, the United States respectfully requests that the Court set the matter for trial beginning August 4, 2008.

## **II. The Speedy Trial Clause and the Speedy Trial Act Protect the Public's Right to Timely Administration of Justice.**

The Sixth Amendment of the U.S. Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ." U.S. Const., Amend. VI. In *Barker v. Wingo*, 407 U.S. 514 (1972), the Supreme Court explained that this

right is different from other constitutional rights that protect an accused in three principal areas. First, “there is a societal interest in providing a speedy trial which exists separate from, and at times in opposition to, the interests of the accused.” *Id.* at 519. The failure to provide prompt trials “enables defendants to negotiate more effectively for pleas of guilty to lesser offenses and otherwise manipulate the system.” *Id.* Similarly, the provisions of the Speedy Trial Act, 18 U.S.C. § 3161, were not designed solely to protect a defendant’s right to a speedy trial. The Act was also designed with the public interest firmly in mind. See, *e.g.*, 18 U.S.C. § 3161(h)(8)(A)(requiring a finding by the district court to exclude delay resulting from a continuance, even one granted at the request of the defendant, “that the ends of justice served ... outweigh *the best interest of the public and the defendant in a speedy trial.*”

Second, the *Barker* Court observed that deprivation of the right to a speedy trial “may work to the accused’s advantage.” *Id.* at 521. As Justice Powell noted, “[d]elay is not an uncommon defense tactic. As time between the commission of the crime and trial lengthens, witnesses may become unavailable or their memories may fade. If the witnesses support the prosecution, its case will be weakened, sometimes seriously so.” *Id.* at 521.

With regard to scheduling the trial of this case, the Department of Justice firmly believes that Green’s proposed trial date of April 2009 unduly burdens the public’s right to a speedy trial in this case. This proposed trial date is 30 months after the Defendant’s indictment and 21 months after the United States’ notice of intent to seek the death penalty was filed. While defense counsel has frequently referred during further proceedings to the “uniqueness” of this case, at its core, it is a rape and murder case committed overseas. Death penalty cases generally average 20 months from indictment to trial and 11 months from the United States’ notice of

intent to seek the death penalty to trial.<sup>1</sup> Furthermore, other death penalty cases certainly of more complexity and breadth have been litigated in the federal district courts in under two years.<sup>2</sup>

If anything, this case is unique from the standpoint that the Defendant has had access to far more information and evidence during the course of pre-trial discovery than he would have in most criminal cases. The United States' case against Green rests largely on the testimony of those soldiers who participated with Green in the crime and were charged and prosecuted by the United States Army. This is not a rape and homicide case in which defense counsel have to review DNA or other complicated forensic or scientific evidence. Because of the court martial proceedings conducted by the Army, Green's defense counsel have had the opportunity over the last year to obtain the sworn statements of the witnesses against Green, and to observe them as they have testified under oath beginning with PFC James Barker's change of plea in November

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<sup>1</sup> The Federal Death Penalty Resource Counsel (FDPRC), funded by the Defender Services Division of the Administrative Office of the United States Courts, maintains a comprehensive list of federal death penalty prosecutions and information regarding district court practices in those cases. Then-FDPRC counsel Kevin McNally submitted a declaration, supported by a compilation of federal death penalty statistics, filed in *United States v. Young* (M.D.TN., Cr. No. 3:98-00038). McNally's declaration states that the average time between indictment and trial in federal death penalty cases is 20 months, while the average time between the notice of intent to seek the death penalty and trial is approximately 11 months. Moreover, these averages are weighted with cases involving significant delays due to competency issues and pretrial appeals.

<sup>2</sup> *United States v. Moussaui*, Docket No. 01cr0045 (E.D.Va.), was the largest criminal investigation in U.S. history. Before the case was postponed for interlocutory appeals, the case was scheduled for trial 13 months after indictment and 10 months after notice of the death penalty was filed.

Indictments as a result of the 1998 U.S. Embassy bombings in Kenya and Tanzania were returned in late 1999; the notice of intent to seek the death penalty was filed in May 2000; and trial began 9 months later. *United States v. [el] Hage, et al.*, Docket No. 98cr01023 (S.D.N.Y.).

The Alfred P. Murrah Federal building in Oklahoma City was bombed on April 19, 1995. Defendants McVeigh and Nichols were indicted in August 1995. In October 1995, prosecutors filed their notice to seek the death penalty. Trial began 17 months later. *United States v. McVeigh et al.*, Docket No. 96cr00068 (D. Co.).

Although not a death penalty prosecution, defendants in the 1993 World Trade Center Bombing case were indicted in August 1993. Trial was originally set for Fall 1994, but after a change of counsel, a nine-month trial began 17 months after indictment in January 1995. *United States v. Elgabrowni, et al.*, Docket No. 93cr00181 (S.D.N.Y.).

2006, and continuing through the change of plea, trial and sentencing of SPC Paul Cortez in February 2007, of PFC Bryan Howard in March 2007, and the trial of PFC Jesse Spielman in August 2007. In a case which is based almost entirely on testimonial evidence, delay inures only to the benefit of the Defendant as memories begin to fade and the events of March 12, 2006, grow more distant by the day. To the extent that certain witnesses in this case continue to serve in the United States Army and are deployed to Iraq and other locations, placing them once again in combat, this case presents the very real possibility that witnesses may not be available for trial.

In *Barker*, the Supreme Court noted that the third way in which the right to speedy trial differs from other procedural rights is that “the right to speedy trial is a more vague concept than other procedural rights” *Id.* at 521. The Court “cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate.” *Id.* Thus the right to a speedy trial is “necessarily relative.” *Id.* at 522. “It secures rights to a defendant. It does not preclude the rights of public justice.” *Id.* Excessive delay in this case inures to the benefit of the defendant, not to the United States, and frustrates the societal interest in a prompt disposition of this case. Justice delayed is justice denied, and that is as true for the United States as for the Defendant. Setting this case for trial to begin on August 4, 2008, gives the Defendant ample time to prepare to defend the case against him, but is not so long as to preclude the rights of public justice. Delaying the commencement of trial in this case until Spring, 2009, as the Defendant wants to do, is both unnecessary and unreasonable. An August 4, 2008, trial date would be 13 months from the date the United States filed its notice of intention to seek the death penalty, and 21 months from the date of indictment.

For the foregoing reasons, the United States moves the Court to enter the tendered Order setting this case for trial to begin on August 4, 2008.

Respectfully submitted,

DAVID L. HUBER  
UNITED STATES ATTORNEY

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CERTIFICATE OF SERVICE

I certify that on December 7, 2007, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send notice of electronic filing to Scott T. Wendelsdorf, Federal Defender, and Patrick J. Bouldin, Assistant Federal Defender, counsel for defendant, Steven D. Green.

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Marisa J. Ford  
Assistant United States Attorney

